

December 23, 2016

Certified Mail

Shane Leonard
Chair
Maricopa County Air Pollution Hearing Board
101 N. Central Avenue
#125
Phoenix, AZ 85004

Dear Mr. Leonard,

Re: Final Decision and Order (Case No. MCAPHB2016-01-PA)

I would like to thank the Board for hearing my appeal and commend you for making a bold decision to remand the minor permit modification back to the Maricopa County Air Quality Department.

However, there are two issues in the Board's decision with which I disagree, and which, I believe, require reconsideration. These issues were addressed in both my pre-hearing brief and my testimony, which had to be cut short because of the Board's time limit. The first issue is fugitive vs. non-fugitive emissions. The Final Decision and Order fully discusses and supports Maricopa County Air Quality Department's (MCAQD) position as defining a vent, but the Final Decision and Order does not fully consider the open side of the hen house as an opening that functionally allows forced ventilated air to exhaust. Additionally, the Final Decision and Order did not consider circumvention of the rules where the henhouses could have been constructed or may be modified so the emissions pass through a vent or "other functionally equivalent opening."

The second issue is that the Final Decision and Order bases an "agricultural exemption" on MCAQD Rule 200 §308.3 for "agricultural equipment". Hens and manure are the sources of air pollution, both of which are not "agricultural equipment" and are not interchangeable with "agricultural activities". Tractors, cotton pickers, combines, etc. are "agricultural equipment" consistent with A.R.S. 49-426.B.

I am not an attorney and have tried my best to navigate through the legal aspects of the appeal process. I would like to preserve my ability to appeal these two issues. My understanding, however, is that if on remand the MCAQD determines that the facility requires a Title V permit, my concern with these issues would be rendered moot. That is, on the one hand it appears that an appeal and/or request for reconsideration is premature because the case was remanded. On the other hand, I want to make sure that I do not inadvertently lose my ability to appeal because I

waited for the determination on remand. Also it is not clear to me if the appeal is made to the Air Pollution Hearing Board or the Superior Court or if it should be made now or at the time that the Board's order is fulfilled. I assume that I have the ability to challenge the MCAQD's determination on remand although that is also not clear. To the extent you are able, please advise me on this matter.

Additionally, I did not find a time limit in the Decision and Order for MCAQD to determine if the Tonopah Egg Ranch is a major source or not. I did not find any time limitation on the Board's ruling in statute or rule. I am concerned that a potential Title V sources continues to operate without a proper permit. Is there a time limit that MCAQD must comply with the Board's order?

Sincerely,

A handwritten signature in cursive script that reads "Daniel E. Blackson". The signature is written in dark ink and is positioned above the printed name.

Daniel E. Blackson

eCc: Jacqueline Robinson, Hearing Board Administrator
Eric Hiser, Counsel to the Air Pollution Hearing Board